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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO-OAKLAND DIVISION

17 SIERRA CLUB and SOUTHERN BORDER
18 COMMUNITIES COALITION,

19 *Plaintiffs,*

20 v.

21 DONALD J. TRUMP, President of the United
22 States, in his official capacity; PATRICK M.
SHANAHAN, Acting Secretary of Defense, in his
23 official capacity; KIRSTJEN M. NIELSEN,
Secretary of Homeland Security, in her official
24 capacity; and STEVEN MNUCHIN, Secretary of
the Treasury, in his official capacity,
25

26 *Defendants.*

Case No.: 4:19-cv-00892-HSG

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

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REQUEST FOR JUDICIAL NOTICE

Plaintiff Sierra Club and Plaintiff Southern Border Communities Coalition (collectively, “Plaintiffs”) hereby respectfully request, pursuant to Federal Rule of Evidence 201, that the Court take judicial notice of the following materials in support of Plaintiffs’ Motion for Preliminary Injunction.

1. Attached hereto as **Exhibit A** is a true and correct copy of a Letter from Acting Director of the Office of Budget and Management Russell T. Vought to the Honorable Richard

1 Shelby, Chairman of the Senate Committee on Appropriations, dated January 6, 2019.

2 <https://www.whitehouse.gov/wp-content/uploads/2019/01/Final-Shelby-1-6-19.pdf>.

3 2. Attached hereto as **Exhibit B** is a true and correct copy of a tweet from President
4 Donald J. Trump, dated January 30, 2019, 3:49 AM, available on President Trump's official Twitter
5 account, @realDonaldTrump,
6 <https://twitter.com/realdonaldtrump/status/1090577726459838464?lang=en>.

7
8 3. Attached hereto as **Exhibit C** is a true and correct copy of a tweet from President
9 Donald J. Trump, dated February 9, 2019, 2:02 PM, available on President Trump's official Twitter
10 account, @realDonaldTrump, <https://twitter.com/realDonaldTrump/status/1094355899194454017>.

11 4. Attached hereto as **Exhibit D** is a true and correct copy of the "Presidential
12 Proclamation on Declaring a National Emergency Concerning the Southern Border of the United
13 States," dated February 15, 2019, and available on the White House official website at
14 [https://www.whitehouse.gov/presidential-actions/presidential-proclamation-declaring-national-](https://www.whitehouse.gov/presidential-actions/presidential-proclamation-declaring-national-emergency-concerning-southern-border-united-states/)
15 [emergency-concerning-southern-border-united-states/](https://www.whitehouse.gov/presidential-actions/presidential-proclamation-declaring-national-emergency-concerning-southern-border-united-states/).

16
17 5. Attached hereto as **Exhibit E** is a true and correct copy of a transcript of "Remarks by
18 President Trump on the National Security and Humanitarian Crisis on our Southern Border," dated
19 February 15, 2019, and available on the White House official website at
20 [https://www.whitehouse.gov/briefings-statements/remarks-president-trump-national-security-](https://www.whitehouse.gov/briefings-statements/remarks-president-trump-national-security-humanitarian-crisis-southern-border/)
21 [humanitarian-crisis-southern-border/](https://www.whitehouse.gov/briefings-statements/remarks-president-trump-national-security-humanitarian-crisis-southern-border/).

22
23 6. Attached hereto as **Exhibit F** is a true and correct copy of a transcript of "Remarks by
24 President Trump in Cabinet Meeting," dated February 12, 2019, and available on the White House
25 official website at [https://www.whitehouse.gov/briefings-statements/remarks-president-trump-](https://www.whitehouse.gov/briefings-statements/remarks-president-trump-cabinet-meeting-13/)
26 [cabinet-meeting-13/](https://www.whitehouse.gov/briefings-statements/remarks-president-trump-cabinet-meeting-13/).

1 7. Attached hereto as **Exhibit G** is a true and correct copy of the “Fact Sheet” entitled
2 “President Donald J. Trump’s Border Security Victory,” dated February 15, 2019, and available on
3 the White House official website at [https://www.whitehouse.gov/briefings-statements/president-](https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-border-security-victory/)
4 [donald-j-trumps-border-security-victory/](https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-border-security-victory/).

5 8. Attached hereto as **Exhibit H** is a true and correct copy of a Letter from David F.
6 Eisner, Assistant Secretary for Management of the Department of Treasury, to Ranking Members of
7 the Senate and House Committees and Subcommittees on Appropriations, dated February 15, 2019.
8 The letter attaches a document titled “Treasury Forfeiture Fund FY2019 Strategic Support Funding.”

9 9. Attached hereto as **Exhibit I** is a true and correct copy of a Memorandum for Captain
10 Hallock N. Mohler Jr., Executive Secretary of the Department of Defense, from Christina Bobb,
11 Executive Secretary of the Department of Homeland Security, regarding “Request for Assistance
12 Pursuant to 10 U.S.C. § 284,” dated February 25, 2019.
13

14 10. Attached hereto as **Exhibit J** is a true and correct copy of a tweet from President
15 Donald J. Trump, dated March 8, 2019, 4:24 AM, available on President Trump’s official Twitter
16 account, @realDonaldTrump, <https://twitter.com/realdonaldtrump/status/1103994805477085186>.

17 11. Attached hereto as **Exhibit K** is a true and correct copy of a tweet from President
18 Donald J. Trump, dated March 9, 2019, 2:04 PM, available on President Trump’s official Twitter
19 account, @realDonaldTrump, <https://twitter.com/realdonaldtrump/status/1104503216111321089>
20 (“major sections being built”).
21

22 12. Attached hereto as **Exhibit L** is a true and correct copy of a tweet from President
23 Donald J. Trump, dated March 9, 2019, 2:13 PM, available on President Trump’s official Twitter
24 account, @realDonaldTrump, <https://twitter.com/realdonaldtrump/status/1104505623293710337>.
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26 13. Attached hereto as **Exhibit M** is a true and correct copy of a Letter from Senators
27 Patrick Leahy, Richard J. Durbin, and Brian Schatz to the Honorable Gene Dodaro, Comptroller
28

1 General of the United States, dated March 11, 2019, available on Senator Durbin's official website at
2 [https://www.durbin.senate.gov/imo/media/doc/190311%20GAO%20reprogramming%20wall%20let](https://www.durbin.senate.gov/imo/media/doc/190311%20GAO%20reprogramming%20wall%20letter%20FINAL.pdf)
3 [ter%20FINAL.pdf](https://www.durbin.senate.gov/imo/media/doc/190311%20GAO%20reprogramming%20wall%20letter%20FINAL.pdf).

4 14. Attached hereto as **Exhibit N** is a true and correct copy of an excerpt from the
5 Department of Defense Fiscal Year 2020 Budget Request, dated March 12, 2019, available on the
6 official Department of Defense website at
7 [https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2020/fy2020_Budget_Request_O](https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2020/fy2020_Budget_Request_Overview_Book.pdf)
8 [verview_Book.pdf](https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2020/fy2020_Budget_Request_Overview_Book.pdf).

9 15. Attached hereto as **Exhibit O** is a true and correct copy of a Letter from Patrick M.
10 Shanahan, Acting Secretary of Defense, to the Honorable Kirstjen Nielsen, Secretary of Homeland
11 Security, dated March 25, 2019. The letter attaches a notice entitled "Support for DHS Counter-Drug
12 Activity Reprogramming Action."
13

14 16. Attached hereto as **Exhibit P** is a true and correct copy of a CNN news article that
15 quotes Jay Field, Spokesperson for the U.S. Army Corps of Engineers, dated March, 28, 2019, 9:12
16 PM and available at [https://www.cnn.com/2019/03/28/politics/pentagon-border-wall-arizona-](https://www.cnn.com/2019/03/28/politics/pentagon-border-wall-arizona-texas/index.html)
17 [texas/index.html](https://www.cnn.com/2019/03/28/politics/pentagon-border-wall-arizona-texas/index.html).
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19 17. Attached hereto as **Exhibit Q** is a true and correct copy of an excerpt from the Fiscal
20 Year 2020 White House Budget Request, dated March 11, 2019, available on the White House
21 official website at <https://www.whitehouse.gov/wp-content/uploads/2019/03/budget-fy2020.pdf>.
22

23 18. Attached hereto as **Exhibit R** is a true and correct copy of an excerpt from the Fiscal
24 Year 2019 White House Budget Request, dated February 2018, available on the official White
25 House website at <https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf>.
26

27 19. Attached hereto as **Exhibit S** is a true and correct copy of an excerpt from the
28 transcript of testimony by Acting Defense Secretary Patrick Shanahan and Joint Chiefs of Staff

1 Chair General Joseph Dunford, before the Senate Armed Services Committee, dated March 14,
 2 2019, available on the Senate Armed Services Committee's official website, [https://www.armed-](https://www.armed-services.senate.gov/imo/media/doc/19-25-03-14-19.pdf)
 3 [services.senate.gov/imo/media/doc/19-25-03-14-19.pdf](https://www.armed-services.senate.gov/imo/media/doc/19-25-03-14-19.pdf).

4 20. Attached hereto as **Exhibit T** is a true and correct copy of a transcript of "Remarks by
 5 President Trump Before Marine One Departure," dated January 10, 2019, and available on the White
 6 House official website at [https://www.whitehouse.gov/briefings-statements/remarks-president-](https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-30/)
 7 [trump-marine-one-departure-30/](https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-30/).

9 21. Video recording of a February 10, 2019 interview of Mick Mulvaney, Acting White
 10 House Chief of Staff, on Fox News, available at https://www.youtube.com/watch?v=l_Z0xx_zS0M.

11 22. Video recording of testimony by Kirstjen Nielsen, Secretary of Homeland Security,
 12 before the House Homeland Security Committee, on March 6, 2019, available at [https://www.c-](https://www.c-span.org/video/?458250-1/immigration-border-security)
 13 [span.org/video/?458250-1/immigration-border-security](https://www.c-span.org/video/?458250-1/immigration-border-security).

15 All of the above materials are judicially noticeable because the statements they contain "can
 16 be accurately and readily determined from sources whose accuracy cannot reasonably be
 17 questioned." Fed. R. Evid. 201(b)(2); *see also Cty. of Santa Clara v. Trump*, 267 F. Supp. 3d 1201,
 18 1216-18, n.7-11 (N.D. Cal. 2017) (taking judicial notice of defendants' public statements,
 19 government memoranda and letters, and information on government websites), *appeal dismissed as*
 20 *moot sub nom. City & Cty. of San Francisco v. Trump*, No. 17-16886, 2018 WL 1401847 (9th Cir.
 21 Jan. 4, 2018); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (court may take judicial
 22 notice of "matters of public record" not subject to reasonable dispute). The Court "must take judicial
 23 notice if a party requests it and the court is supplied with the necessary information." Fed. R. Evid.
 24 201(c)(2).

25 All of the above materials are also judicially noticeable because "government memoranda,
 26 bulletins, reports, letters, and statements of public record are appropriate for judicial notice." *Santa*
 27

1 *Clara II*, 267 F. Supp. 3d at 1217, n.11 (citing *Brown v. Valoff*, 422 F.3d 926, 933 n.9 (9th Cir.
2 2005)); *see also* *Cty. of Santa Clara v. Trump* (“*Santa Clara I*”), 250 F. Supp. 3d 497, 520-23, n.5,
3 8, 10, 11 (N.D. Cal. 2017)(taking judicial notice of government memoranda and letter). Furthermore,
4 the President’s tweets, which the White House has confirmed are ““considered official statements by
5 the President of the United States,”” are judicially noticeable. *See Hawaii v. Trump*, 859 F.3d 741,
6 773 n.14 (9th Cir. 2017) (taking judicial notice of President Trump’s tweets concerning the “travel
7 ban” executive order), *cert. granted sub nom. Trump v. Int’l Refugee Assistance Project*, 137 S. Ct.
8 2080 (2017), and *vacated on other grounds*, 138 S. Ct. 377 (2017).

10 **Exhibits A, D, E, F, G, M, N, Q, R, S, and T** are also judicially noticeable because they are
11 posted to official government websites. *See Santa Clara I*, 250 F. Supp. 3d 497 at 510-23, n.2, 5, 7,
12 9, 10, (taking judicial notice of information and official documents contained on government
13 websites) (citing *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998–999 (9th Cir. 2010)).
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1 Dated: April 4, 2019

Respectfully submitted,

2 /s/ Dror Ladin

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